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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the human rights situation in Haiti prepared by Mr. Philippe Texier, Independent Expert, in accordance with Commission on Human Rights resolution 1990/56

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INTRODUCTION

1. At its forty-sixth session, the Commission on Human Rights considered the report of the Expert (E/CN.4/1990/44) and the addendum thereto (E/CN.4/1990/44/Add.1) and adopted without a vote resolution 1990/56, entitled "Situation of human rights in Haiti". The relevant paragraphs of this resolution are reproduced below:

"...

Alarmed by the proliferation of acts of violence in Haiti, particularly against arrested or detained persons, and by the apparent inability of the Haitian judicial system to put an end to such acts,

Observing that the human rights situation in Haiti remains disturbing and even seems to have deteriorated since July 1989, particularly in rural areas,

Noting that the state of siege introduced on 20 January 1990 was lifted on 30 January and that a general amnesty for prisoners detained for attacks on the security of the State was announced on 7 February, but that many persons remain imprisoned or exiled and that, particularly because of the threats to their security, Haitians are not able to express their opinions freely and to participate under satisfactory conditions in the preparation of elections,

Taking account of the report of the Expert appointed by the Secretary-General, Mr. Philippe Texier, (E/CN.4/1990/44 and Add.1),

1. Expresses its appreciation to the Expert for his report and for the way in which he has discharged his mandate;

2. Welcomes the co-operation extended by the Haitian authorities to the Expert during his visit to Haiti from 25 July to 3 August 1989;

3 Notes, however, that the Haitian authorities have not acted upon the assistance proposals which the Expert submitted to them under the advisory services programme;

4. Expresses the hope that the Haitian authorities will ensure that elections are held as scheduled and in appropriate conditions of honesty and security, under the supervision of impartial observers;

5. Requests the Haitian authorities to proceed forthwith to take the necessary measures to enable exiled opponents to return and to ensure their security, so that they can participate in preparing the elections;

6. Invites the Government of Haiti to bring back into force the full Constitution of 29 March 1987, which was adopted in a referendum by an overwhelming majority;

7. Also invites the Government of Haiti to expedite the investigation into the principal massacres, particularly those of 29 November 1987 and 11 September 1988, and to bring those responsible to trial;

8. Further invites the Government of Haiti to ratify the International Covenants and international conventions on human rights, in accordance with its undertaking of December 1988;

9. Requests the Chairman of the Commission on Human Rights to appoint an independent Expert to examine developments in the human rights situation in Haiti and to help to devise measures capable of making the necessary improvements;

10. Calls upon the Haitian authorities to co-operate fully with the independent Expert;

11. Requests the Secretary-General to provide the independent Expert with all necessary assistance in performing his task;

12. Requests the independent Expert to report to the Commission at its forty-seventh session on developments in the human rights situation in Haiti;

13. Decides to consider the report of the independent Expert at its forty-seventh session under the agenda item 'Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories'."

2. This is the background to the present report; the Expert was guided by the recommendations contained in the above resolution in making his visit to Haiti from 27 June to 5 July 1990 and in establishing relations with the Government of Haiti and non-governmental organizations.

I. GENERAL DEVELOPMENTS IN HAITI DURING 1990

3. The early part of 1990 was marked by a series of events sufficiently serious to justify the preparation of an addendum to the Expert's report. On 20 January 1991, General Avril issued two decrees suspending several articles of the 1987 Constitution, introducing a 30-day state of siege and requiring Haitians who wished to leave or enter the country to obtain a visa.

4. There was also a series of extremely brutal arrests, and total censorship of the press was imposed; only television was allowed to broadcast news.

5. The democratic sector as a whole, opposition parties and a number of human rights bodies were affected by a wave of mostly unlawful arrests, whose sole objective seemed to be to terrorize the country's democratic forces.

6. The following persons were arrested: Serge Gilles, Georges Verleigh, Philippe Stephenson and Yves Duval, leaders of the Haitian Progressive Revolutionary Nationalist Party (PANPRA), a member of the Socialist International, together with a pastor, Jackson Noel, all of whom were at Serge Gilles' home. The particularly deplorable circumstances of these arrests were described in paragraphs 5-14 of the report of 31 January 1990 (E/CN.4/1990/44/Add.1) and do not therefore need to be repeated. Suffice it to recall that the arrests were particularly violent and were effected without any regard for the age or state of health of the persons concerned. For

instance, one of the individuals arrested was Dr. Louis Roy, aged 74 at the time and considered as the father of the 1987 Constitution, who was expelled to the United States.

7. The pretext for these exceptional measures, which compelled most political leaders, even the most moderate, to leave their homes and go into hiding, was the assassination, at dawn on 20 January 1990, of Lieutenant-Colonel André Neptune, a Presidential Guard officer responsible for distributing bonuses to soldiers, who was killed together with his wife and a domestic employee in circumstances that remain unclear.

8. As he had already done on several previous occasions, General Avril used the pretext of an attempted coup d'état within the Presidential Guard, which allegedly took place on Friday, 19 January, when he decided to dismiss Sergeant Heubreux, spokesman of the rank and file who had brought him to power in September 1988 and subsequently saved him at the time of the coup d'état of April 1989. The sergeant had been promoted to the rank of lieutenant, and transferred away from the inner circle of power.

9. The violence sparked off unanimous protests, including in particular a joint communiqué by the ambassadors of the member countries of the European Economic Community represented in Haiti and statements by a United States State Department spokesman and by Canada (see document E/CN.4/1990/44/Add.1, paras. 17 and 18).

10. There were also protests within Haiti: the Chamber of Commerce and Industry, the Association of Industrialists and the Haitian Church spoke out against the wave of arbitrary arrests, illegal imprisonment, exile of political leaders and ill-treatment.

11. On Friday, 26 January 1990, General Avril announced that the state of siege would be lifted on the following Tuesday, i.e. on 30 January, declaring on television that it would be possible to end "the necessary evil that the short-lived state of emergency represents" in view of "the positive results already achieved by efforts to curb the terrorist onslaught". Nothing was said about the return of exiles, the release of prisoners or the restoration of freedom of the press, the only genuine achievement since February 1986. On the other hand, the tone of the General's speech was disturbing, political opponents being described as "enemies of the people" or "anarchists challenging the authority of the State", and the desired objective of intimidation and fear was achieved.

12. It was in these difficult circumstances that the Expert prepared an addendum to the report and submitted it to the Commission at its forty-sixth session. In view of the increasingly hard and intransigent line taken by General Avril in the preceding weeks and his increasingly reticent statements about the organization of elections, changes seemed more and more likely, as the Expert indicated during his oral presentation of the report to the Commission.

13. Rumours were beginning to circulate about the probable departure of General Avril, although it was not possible to establish whether they were well-founded. However, the process accelerated in the space of a few days and General Prosper Avril finally left the Palais National on 10 March 1990. Two days later, at dawn on 12 March, he left Haiti on board a United States military aircraft.

14. The Consultative Assembly, which was originally composed of 11 political parties in the democratic sector and the "Honour-Respect for the Constitution" group proposed the establishment of new transitional institutions: a member of the Court of Cassation would act as President, backed up by a Council of State which would play the kind of role normally performed by Parliament by exercising supervision and putting forward proposals.

15. It should be noted that the 1987 Constitution provides that, in the event of a vacancy in the office of President of the Republic, the President of the Court of Cassation shall serve as interim President of the Republic; there is no provision for a Council of State. This was thus a popular creation, with the Council's membership to comprise 11 representatives of organizations in civilian society and eight representatives of the provinces.

16. Mrs. Ertha Pascal Trouillot, Court of Cassation judge, accepted the post of President of the Provisional Government, on the proposal of the "Group of 12". She was the first woman to serve as Head of State in Haiti's history, having previously been the first female attorney in Port-au-Prince, the first female judge and the first female member of the Court of Cassation.

17. On 13 March 1990, Mrs. Trouillot was installed in office at the Palais National. She pledged, "with the loyal and irreproachable support of the army", to set up "as soon as possible, to run the affairs of the country, a permanent Government chosen by the people in complete freedom". She also affirmed the supporting role to be played by the Council of State, both in following current Government business and in ensuring a response to the people's aspirations.

18. On 18 March 1990, Mrs. Trouillot announced the composition of her Government: National Defence: Colonel (Retd.) Jean Thomas; Interior: Me. Joseph Maxi; Justice: Me. Pierre Labissière; Economy and Finance: Mr. Leslie Gauthier; National Education, Youth and Sport: Charles Tardieu; Information and Co-ordination: Carlo Besinor; Public Health and Population: Serge Fils-Aimé; Agriculture, Natural Resources and Development: Lionel Richard; Social Affairs: Claudette Werleigh; Public Works: Jean Pierre Moïse Pierre Louis; Civil Service: Ludovic Pierre; Trade and Industry: Maurice Lafortune; Foreign Affairs and Religion: Kesler Clermont.

19. It should be noted that, for the first time since February 1986, the Ministry of National Defence and the Ministry of the Interior were separated and placed under two different Ministers. Moreover, several Ministers are known for their role in the democratic opposition or have distinguished themselves as defenders of human rights. For instance, Mr. P. Labissière, Minister of Justice, was formerly President of the Port-au-Prince Bar Association, and Mr. J. Maxi formerly President of the Haitian League for Human Rights. These few changes have considerable symbolic significance.

20. At the same time, a number of senior officials in the public administration were ousted by the staff themselves in what were often questionable circumstances, in particular at the Overseas Haitians Department, the National Civil Aviation Office, the State Stores Office, the Haitian Lottery, the Haitian Cement Company, the telecommunications authority, etc.

21. It is helpful to give a brief description of the Council of State, a new institution whose relations with the President of the Provisional Government experienced periodic difficulties throughout 1990. At its sitting of 4 March 1990, the Consultative Assembly defined the powers of the Council of State as follows:

> "The basic role of the Council of State is to oversee the actions of the executive, whose main task is to deal with current business and to arrange for free and democratic elections to be held as soon as possible.
>
> "Accordingly, the Council of State shall give its opinion on the following activities of the executive: the formation of the ministerial cabinet, the promulgation of any decree or order, the signature of any treaty, agreement or convention relating to urgent, short-term projects not involving the future of the nation, and the general running of the country in the political, economic and social spheres.
>
> "In the event of a serious disagreement with the executive and once all conciliation procedures have been exhausted, the Council of State shall advise the Haitian people, through the press, of the nature of the dispute and may exercise its right of veto. A two-thirds majority of the Council membership shall be required for a vote of no confidence in the executive.
>
> "... The members of the Council of State shall be sworn in by the Court of Cassation and shall immediately take up office. Under no circumstances may the executive dissolve the Council of State ... The mandate of the Provisional Government shall come to an end when the constitutionally elected President is installed."

22. The membership of the Council of State is supplemented by eight representatives of the provinces.

23. Clearly, the Consultative Assembly wished to grant this new institution extensive powers for supervising the executive, which occasionally endeavoured to break free from them; this led to functional difficulties and even serious threats of a split on several occasions.

24. On 16 March 1990, 11 members of the Council of State were appointed by presidential decree, as follows: representative of the human rights sector: Dr. Louis Roy; trade-union sector: Ernst Mallebranche; peasant sector: Marc Lamour; private sector: Serge Vilard; educational sector: Lesly Voltaire; socio-professional sector: Michel Lominy; journalists' association: Vénel Remarais; the Bar: Me. Kernizan; women's sector: Suzy Castor; reformed churches: Chavannes Jeune; working-class sector: Gérard Blot.

25. Two other sectors were called upon to participate by the Consultative Assembly: the Episcopal Conference and the army. The Episcopal Conference preferred to stay out, so as to be able to play a possible mediating role, while the high command of the army replied that "reasons related to army regulations and hierarchical problems prevent it from sending a representative".

26. From the outset, the military authorities at the highest level announced that they would submit to the new provisional civilian Government. Right after the investiture of the President, General Hérard Abraham, Chief of Staff, made a speech that attracted considerable attention, stating:

> "Almost 72 hours ago, the Haitian armed forces had the specific mission of preserving national sovereignty in order to create suitable conditions for the installation of a provisional civilian President ... The unstinting co-operation received from all interested sectors and your acceptance of your nomination have enabled the Haitian armed forces to achieve this objective on schedule, and with honour ...
>
> The army is returning to ... sorry, has stayed in its barracks. It will remain at the service of the authorities to perform its primary task of guaranteeing the life and property of all citizens. It sincerely thanks the officers, non-commissioned officers and soldiers, civilian society, the churches, and the political parties for their spirit of co-operation and dialogue, which have helped the country to surmount this serious crisis without national institutions being endangered ...
>
> 'The Consultative Assembly' and the 'Honour-Respect for the Constitution' group, with the agreement of many socio-professional and religious associations, called upon the high command of the Haitian armed forces to take steps to install a provisional civilian President at the head of the State. I therefore have the honour, as Commander-in-Chief of the Haitian armed forces, to invest citizen Ertha Pascal Trouillot as provisional President of the Republic of Haiti. The mission entrusted to the Haitian armed forces is thus at an end while yours, Madam President, is beginning ...
>
> Madam President of the Republic, the Haitian armed forces are at your command."

27. The Chief of Staff thus declared his loyalty to the provisional civilian Government. As at 8 December 1990, he had kept his word.

28. Between 12 and 22 March 1990, the leading figures exiled on 20 January 1990 returned to Haiti: Aloy Brun of KONAKOM (National Committee of the Congress of Democratic Movements; Hubert de Ronceray, President of MDN (Mobilization for National Development); Dr. Louis Roy, father of the Constitution, who testified to the Commission on Human Rights at its forty-sixth session and who was to become President of the Council of State, and Turneb Delpé of FNDPM (Haitian National Democratic Party), whose cases were referred to in our 1990 report.

29. The Church, in the person of Mgr. Willy Romelus, Bishop of Jérémie, expressed support for the new President. All trade union federations also lent their support to the process of change.

30. By three decrees issued on 12 April 1990, Me. Pierre Labissière, Minister of Justice, dissolved the Permanent Electoral Council (which had been set up by General Namphy on 23 February 1988). He ordered the General Taxation Department to take the necessary measures to safeguard the property in the Council's possession and reintroduced the Decree of 13 May 1987 (abrogated by General Namphy) setting up the original Provisional Electoral Council, which had enjoyed the confidence of Haitian citizens.

31. This Provisional Electoral Council is composed of nine members, designated as follows: (1) one by the executive (government officials excluded); (2) one by the Episcopal Conference; (3) one by the trade-union organizations; (4) one by the Court of Cassation; (5) one by human rights bodies not participating in the elections; (6) one by the university senate; (7) one by the Journalists' Association; (8) one by the reformed churches; (9) one by the National Board of Co-operatives. This composition is fully in accordance with the 1987 Constitution.

32. On 5 April 1990, Mrs. Trouillot sent an official letter to the Secretary-General of the United Nations requesting the Organization's assistance in arranging the forthcoming general elections.

33. At the same time, various difficulties arose in certain government departments or town councils because of the failure to accept nominations for new officials. Claude Baboun, mayor of Port-au-Prince, resigned on 15 April 1990.

34. A presidential order of 20 March 1990, published on 11 April, appointed Lieutenant-General Abraham as Commander-in-Chief of the Haitian armed forces, but there was difficulty in enforcing discipline, as two examples serve to demonstrate. On 2 April 1990, a soldier seized control of an American Airlines plane at Port-au-Prince airport in protest against a disciplinary measure imposed by his superiors. After four days of negotiations, he managed to escape by crossing the runway during the night. Also on 2 April, soldiers from the Hinché garrison in the central plateau refused to accept the appointment of Colonel Henri Robert Augustin as commander of the department. Soldiers at Gonaives (Artibonite) had a similar reaction to the announcement of the appointment of Colonel Ulysse François as commander. In both cases, a military delegation was able to persuade the garrisons to accept these officers, but the examples are significant.

35. The first signs of tension between the executive and the Council of State appeared on 2 April 1990 in connection with the Council's powers. The President was reminded of the 11 March 1990 agreement by the Consultative Assembly in a letter of 30 March stressing the role of the Council of State which, the Assembly stated, was to: supervise general Government policy; formulate Haiti's domestic and foreign policy in conjunction with the executive; pronounce on any decree before its promulgation; and assist the executive with any measure to be taken during the transitional period.

36. This letter criticized the Government for failing to keep a number of its commitments and, in particular, for not giving the Council of State the material resources it needed to operate and for not making the judicial and police reforms that would enable the authorities to act against notorious criminals.

37. The difficulties continued throughout April: on 14 April 1990, for instance, a Council of State delegation on mission in Bas-Artibonite was refused passage by a corporal who stated that "there will be no meeting at Labadie without an order from the army". Some people seem to challenge the very existence of the Council of State.

38. However, the process of establishing the new institutions continued, and a presidential order of 27 April 1990 designated the members of the new Provisional Electoral Council (CEP), as follows: Pierre Gonzales, Jean-François Merisier, Philippe Jules, Emmanuel Ambroise, Me. Jean-Philippe Rosemond, Arold Julien, Mrs. Yva Youance, Jean Casimir and Ernst Mirville. Three of these persons - Philippe Jules, Emmanuel Ambroise and Ernst Mirville - had already been members of the 1987 CEP.

39. The President continued to express a desire for elections to be held as soon as possible. On 9 May 1990, she said that she wanted elections to take place "by no later than September", while specifying that it was for the CEP, as the body responsible for organizing the elections, to set the date.

40. Restructuring continued in local and national government. Mrs. Irène Ridore became the new mayor of Port-au-Prince and, it may be noted, had to seek help from the population to cope with the threats and attacks to which she was subjected. She personally told the Expert that, on 3 May 1990, she had been threatened in her office by a gunman wearing a red armband. After being questioned by the police at the mayor's request, he was released; he returned to the town hall a few minutes later.

41. In early May, the Port-au-Prince town hall, the Haitian national television service and the Haitian flour-milling company had to close for restructuring.

42. On 2 May 1990, eight of the nine members of the CEP were sworn in by the President of the Court of Cassation at the Palais de Justice in Port-au-Prince. Dr. Ernst Mirville, representative of the press, was absent. One week later, the executive replaced him by Jean-Robert Sabalat, former head of the 1987 CEP Electoral Departmental Bureau, who became Chairman of the CEP later in 1990.

43. A number of political parties or political alliances in the democratic sector became impatient, calling for prompt publication of the electoral timetable and, in the case of many of them, for all elections to be held on the same day.

44. Shortly after the new CEP was sworn in, there were signs of a resurgence of insecurity. Many peasants rallied behind the themes of high cost of living, justice and security. They called for the replacement of certain section heads and judicial officials.

45. Tension between the executive and the Council of State flared up when Mrs. Trouillot, by order of 21 May 1990, appointed Mrs. Marie Violène Legagneur as Minister of the Economy and Finance as a replacement for Mr. Leslie Goutier without first consulting the Council of State.

46. On 15 May, the CEP met to hold internal elections. Mr. Jean-Robert Sabalat was chosen as Chairman, Mrs. Yva Youance as Vice-Chairman, Mr. Jean Casimir as Secretary-General and Mr. Arold Julien as Treasurer.

47. On 11 May, following a meeting between the executive, the Council of State and the Consultative Assembly, the President, the Ministers and the Council of State declared their willingness to inform public opinion periodically "of administrative difficulties and the solutions introduced, in a spirit of the greatest openness".

48. On 7 June 1990, the CEP held its first press conference, at which the Chairman, Jean-Robert Sabalat, stated that "the elections will be held at the end of September 1990, in a single day. That is technically possible." He added that the CEP would abide by article 291 of the 1987 Constitution, according to which:

> "The following may not seek any public office for 10 years following the publication of this Constitution ...
>
> (a) Any person generally known to have been, through his excess of zeal, one of the artisans of the dictatorship and its maintenance over the past 29 years;
>
> (b) Anyone responsible for public funds during the years of the dictatorship regarding whom there is a presumption of illicit enrichment;
>
> (c) Any person denounced by public outcry as having tortured political prisoners at the time of arrests and inquiries or of having committed political assassinations."

49. The Secretary-General of the CEP, Jean Casimir, said that international observers had been invited from the United Nations or the OAS to verify the results of the elections, as had been done in Nicaragua in early 1990.

50. On 4 June 1990, the Council of State published a report entitled "The Council of State and the Nation", which was fairly critical of its relations with the executive and the executive's lack of determination. It says among other things that "the Provisional Government should tackle with determination the four main types of problems to which the inhabitants of the Republic's nine departments are demanding a solution and on which the Council of State has taken a very clear position from the beginning: insecurity and justice, cleaning up the public administration, lowering the cost of living and relations with the executive". It would seem that the appointment of Mrs. Lagagneur as Minister of Finance without the Council of State's agreement prompted its decision to publish this negative report.

51. The "Group of 12" called for the resignation of Mrs. Lagagneur, who had been a founder member of Jean-Claude Duvalier's National Progressive Party. The "Honour-Respect for the Constitution" group and a number of trade unions and employers' organizations associated themselves with this demand. Other political leaders supported the Minister and accused the Consultative Assembly of having given the Council of State too much power. The political situation was getting rather tense, as people declared themselves candidates for the Presidency of the Republic, particularly when they were likely to be covered by article 291 of the Constitution. Thus, for example, on 6 June 1990, Claude Raymond, a former general of the armed forces under Francois Duvalier and a former candidate for President rejected by the 1987 CEP, announced his candidacy over the Haitian National Radio. When asked about the events of November 1987, he denied that his supporters had been involved in the massacre in any way.

52. On 7 June 1990, the General Assembly of the OAS, meeting in Paraguay, adopted the report of the Inter-American Commission on Human Rights, which denounced the climate of violence in Haiti, and in particular the existence of an institutionalized practice of violence by members of institutions whose

function was precisely to keep the peace and safeguard citizens' human rights, especially the right to life and personal safety. Those institutions were, in the Commission's opinion, the army, the police, the section heads and the paramilitary groups supporting them.

53. On 31 May 1990, there was another massacre of 11 peasants at Pérodin (Artibonite) (see below), where various section heads were engaging in abuses.

54. On 21 June, Serge Villard, representative of the private sector in the Council of State, and Jean Robert Montès, a trade unionist belonging to the Autonomous Confederation of Haitian Workers (CATH), were killed in an attack. This was a very serious incident, threatening the already fragile stability of institutions, which some people interpreted as the conservative forces' response to the positions taken by the Council of State, to the electoral law due to be published in the next few days, or to the presence in Haiti of a United Nations mission to study the possibility of assistance in the organization of the elections.

55. This mission, which the Expert met in New York on its return from Port-au-Prince, visited Haiti from 19 to 24 June. It had long meetings with the executive, the Council of State, the Electoral Council and the army to examine what kind of aid could be given in the areas of logistics, organization, observation and security.

56. Mrs. Trouillot, President of the Provisional Government, was to have gone to New York for a working meeting with the Secretary-General of the United Nations, together with a representative of the army, the Chairman of the Provisional Electoral Council and the Chairman of the Council of State. In the end she cancelled the trip, which led to an immediate visit by the Special Representative of the Secretary-General, who spent a week in Haiti.

57. It was during this same period, on 16 June 1990 to be precise, that the Co-ordinating Committee for the Security of the Elections was set up.

58. Announced by the high command of the Haitian armed forces, this appointment of a committee of four senior army officers to put forward a plan for protecting prominent Haitians and foreigners during the electoral period was encouraging. On the same day, a liaison committee was established to maintain contact with the different army units. It was also around this time, on 11 June, that a three-month seminar was started at which some 30 district commanders were to be given training in civics by both civil and military instructors.

59. The Council of State took various public positions distancing itself from the executive: it condemned the "reprisals against the peasants in Pérodin in violation of the mandatory provisions of the Constitution" and invited "the authorities concerned to desist from any kind of pressure or brutality against the peasants of Pérodin and to take all necessary steps to comply with the laws of the country". It also contested the validity of the appointment of the Minister of Finance, in a note to the President, in which it refused to "associate itself with any act of the executive bearing the signature of Mrs. Violène Legagneur".

60. Criticism of that Minister was being heard from all sides. The "Honour-Respect for the Constitution" group stepped up its attacks on her, and

other trade unions and political groups called for her departure. The political parties were divided on the date of the elections, some wanting them to be in September and others later, and on the Council of State, whose role was contested by a number of parties.

61. At the same time as the United Nations mission led by Mr. João Augusto de Medicis, Personal Representative of the Secretary-General of the United Nations, a two-man OAS mission, consisting of Mr. Jorge Barbosa and Mr. Pierre F. Coté, was visiting Haiti.

62. While the conflict between the executive and the Council of State was continuing, and indeed worsening, the return to Haiti of two Duvalier supporters against whom judicial proceedings had been brought increased the tension somewhat. After much beating about the bush and an exchange of letters between the President and the Council of State, Mrs. Trouillot agreed to the publication in the Moniteur (the official gazette of the Republic of Haiti) of the protocol of agreement she had signed on 4 March 1990 with the Consultative Assembly. This was announced on 19 July in a note from the Provisional Electoral Council.

63. At the same time, Roger Lafontant, former chief of the Macoutes under Jean-Claude Duvalier, and William Régala, Minister of the Interior at the time of the 29 November 1987 massacre, entered the country despite instructions to the contrary from Joseph Maxi, Minister of the Interior, on 7 July 1990.

64. A warrant had been issued for the arrest of R. Lafontant; it was declared null and void because of a procedural irregularity by an interim relief judge in Port-au-Prince, Me. Justin Fougère. He, and another judge, Me. Luc Thimothée, were immediately retired by the Provisional Government. A second arrest warrant was issued on 16 July. The Government Commissioner was then appointed before the Senior Judge of the Civil Tribunal to decide on its validity. The hearing, held on 18 and 20 July, was contested by R. Lafontant's lawyers and adjourned to 24 July. This affair caused reactions in all sectors and deeply divided public opinion.

65. The army, in particular, was unable to arrest these people. On 9 July 1990, Captain Patrick Bastien, Chief of Security at the airport, asserted that he had "not received any instructions from his superiors to arrest Roger Lafontant". Active efforts were however made to trace him, and searches were carried out over the weekend of 15 July.

66. During a meeting on 12 July at which the Council of State analysed the crisis in its relations with the executive, it concluded, following consultations with the representatives of the parties in the Consultative Assembly, that: (1) The future of democracy was endangered by the presence in Haiti of William Régala and Roger Lafontant. It was for the executive "still in office" to take appropriate action; (2) The Council of State should remain in office until the inauguration of the democratically-elected Government; (3) Any solution to the crisis which would modify the alternative of 4 March 1990 as it then stood or would mean dissolving the Council of State was unacceptable; (4) A meeting was necessary between the Council of State, the army and the Consultative Assembly with a view to finding a solution to the crisis as quickly as possible.

67. The Provisional Electoral Council offered itself as a mediator between the executive and the Council of State and declared in a communiqué of 10 July 1990 that "the presence of Roger Lafontant and William Régala can only interfere with the electoral process". It asked the political parties which had called a strike to suspend it for the time being.

68. On 10 July 1990, the electoral law was published in the official gazette (without reference to the Council of State). It was very close to the preliminary draft put forward in June (see below).

69. The political parties were more and more divided between those which supported the President of the Provisional Government and those which denounced the executive as conniving at the return of leading Duvalier supporters. The strike called by the consultative parties (except for Marc Bazin's MIDH and the MNP 28) to have W. Régala and R. Lafontant arrested took place on 11 July and was an undoubted success. But the great majority of politicians denounced their presence, with the exception of those two persons themselves: W. Régala said that there was "a veritable campaign of denigration against a retired major-general with a clean record and a citizen with nothing on his conscience"; R. Lafontant, for his part, expressed his opposition to a warrant "issued arbitrarily by the judge" and invoked article 41 of the Constitution, under which "no person of Haitian nationality can be deported or forced to leave the national territory. Whatever the reason, no one may be deprived of his legal capacity or his nationality on political grounds."

70. Many grass-roots organizations, both in Port-au-Prince and in the provinces, also protested against their presence. Complaints were also lodged against Mr. Régala and Mr. Lafontant, in particular by Bernard Sansaricq and Sylvio Claude. Some sectors of the church (Father Aristide) associated themselves with the protest, as did the trade unions and the peasants.

71. It was in August that the President of the Provisional Government visited Latin America (Venezuela, Colombia) and made her official request to the United Nations for help with the elections. She asked for United Nations assistance with observation and verification of the electoral process and with the implementation of a security plan, in three letters dated 23 June, 9 August and 14 September 1990.

72. In those letters she asked in particular for:

> "Observation and verification of the elections covering the whole of the electoral process, and in particular the registration of electors on the electoral rolls, the registration of candidates, freedom of expression and campaigning for the political parties, respect for the equality of the candidates during the election campaign and independent verification of the results of the vote;
>
> Finalization of conditions enabling such international observation to produce an independent and valid judgement on the prospects for establishing democratic stability on the basis of the election results;
>
> Arrangements for the international presence to be visibly active, essential if electors' fears are to be dispelled and representative participation by the population ensured;

Assistance to the Co-ordinating Committee for the Security of the Elections of the Haitian armed forces from advisers with experience in the field of security in the preparation and implementation of electoral security plans;

Observation by specialized United Nations staff of the application of those security plans throughout the national territory;

Co-ordination of the offers of assistance by CARICOM and UNDP with a view to ensuring secure conditions in and around polling stations;

In this connection, the Haitian Government stresses the need to co-ordinate aid from multilateral sources in order to make it as effective as possible ..."

73. At its forty-fifth session, the General Assembly of the United Nations adopted resolution 45/2 dated 10 October 1990. In it the General Assembly reaffirmed the sovereign right of the people of Haiti to choose and participate freely in the determination of their own destiny without any external interference, and:

"1. Requests the Secretary-General, in co-operation with regional organizations and Member States, to provide the broadest possible support to the Government of Haiti in meeting, to the extent possible, the following requests:

(a) A nucleus of some 50 observers that would arrive in Haiti prior to voter registration and would leave only after the elections;

(b) Reinforcement of the nucleus at the time of elections and voter registration, bringing the total to a few hundred observers;

(c) Assistance to the Co-ordinating Committee for the Security of the Elections, to be provided by two or three advisers;

(d) Observation of the implementation of the electoral security plans by specialized staff, that is, by observers, the number of whom remains to be determined, with solid experience in the public order field;

"2. Urges the international community and relevant international organizations to increase their technical, economic and financial co-operation with Haiti, in order to support the economic and social development efforts of the country;

"3. Requests the Secretary-General to submit to the General Assembly a report on the implementation of the present resolution."

74. It was at the same time that the Council of State announced that it was in "open war" with the President. In an "address to the nation", dated 14 August 1990, it declared that "it wholly dissociates itself from the policy followed by the executive [and] exercises its right of veto with regard to the policy of the executive presided over by Mrs. Ertha Pascal Trouillot". This was the culmination of a crisis that had been brewing for several weeks.

75. On 6 August the Provisional Electoral Council announced that it was postponing the start of electoral registration until 3 September 1990 for various reasons, among which financial difficulties, security problems and tension between it and the army or the executive played their part. The CEP's offices were even attacked on 14 August 1990 by five armed men, said to have been identified as Lafontant's men.

76. Political parties of all tendencies were beginning to mobilize for the elections. All kinds of statements were being issued and positions taken up for or against the Council of State and for or against the executive and the President of the Provisional Government, whose resignation was still being demanded in some quarters. On 8 August, 200 Duvalier supporters paraded through the streets of Port-au-Prince to "protest against foreign interference and the visit to the capital of Dan Quayle, the Vice-President of the United States". They shouted slogans against the Council of State, the Provisional Electoral Council and the democratic sector.

77. On 24 August 1990, five Ministers resigned - Claudette Werleigh, Minister of Social Affairs, Charles Tardieu, Minister of National Education, Lionel Richard, Minister of Agriculture, Kesler Clermont, Minister for Foreign Affairs and Religion, and Maurice Lafortune, Minister of Industry and Trade - on the grounds that Mrs. Trouillot was not observing the protocol of agreement of 4 March 1990 on power-sharing between the executive and the Council of State.

78. On 27 August, the following were appointed to replace the Ministers who had resigned: Alfred Mentor, Information, Culture and Co-ordination, Alex Toussaint, Foreign Affairs and Religion, André Jean Louis, Agriculture, Natural Resources and Rural Development, Jean Mainvil, Trade and Industry, Chavannes Douyon, National Education, Youth and Sport, and Onil Millet, Economic Affairs.

79. When the new Cabinet took office, on 27 August, Mrs. Trouillot made a very firm speech saying that nothing would prevent her from seeing the process through to the end. (At that time the election date was set at 4 November.)

80. On 28 and 29 August, the army's Co-ordinating Committee for the Security of the Elections, consisting of senior army officers and the commanders of the nine military departments, took part in a round-table with the Provisional Electoral Council, "to envisage all measures necessary to guarantee full and complete security for voters during the general elections on 4 November". A week earlier, the civics seminar for the military had come to an end; it had tackled such varied themes as the history of the army, the electoral process, the Penal Code, human rights in the 1987 Constitution, the Universal Declaration of Human Rights, protection of the environment, military ethics, the Rural Code, public relations, etc.

81. The Council of State made an appeal to the CEP on 29 August, saying that:

> "... only a credible government can create a climate of confidence enabling the CEP to organize genuine elections by the scheduled date and allowing the people to turn out in force at the polls.

"The presence of Roger Lafontant and other torturers from the previous régime at large in the country, the equivocations of the executive, the army and the judiciary in relation to the measures of justice demanded by the population, the street demonstrations and actions by terrorist groups are new developmnets which have undermined the Government's legitimacy and call in question its will and capacity to provide the minimum security conditions for the holding of elections.

"The executive is operating in total breach of the principles governing the Provisional Government and without any legality or legitimacy."

82. The CEP then postponed the elections "for technical, material and financial reasons". It announced on 1 September that electoral registration, which was to have begun on 3 September, would be postponed to 5 October 1990. It welcomed, however, the meetings it had held with the Co-ordinating Committee for the Security of the Elections.

83. The Consultative Assembly declared itself more and more openly hostile to the President, asked the CEP to suspend operations temporarily and even called for the formation of a new provisional government. Public opinion (employers' associations, socio-professional associations, trade unions, peasants) became daily more divided for or against the power-sharing formula between the executive and the Council of State, supporting one or the other as the case might be.

84. Haitian political life was becoming increasingly polarized between organizations which supported the Electoral Council in its decision to postpone the elections and those which rejected that decision. Political parties, associations and trade unions alike were affected.

85. The Council of State declared that it was still hostile to any accommodation with the executive after the "violation by the executive of the protocol of agreement of 4 March", its vote of defiance and the appointment of a new cabinet without the Council's being consulted, but it announced on 9 September that it would not resign.

86. The Chairman of the CEP, in a statement at the beginning of September, explained that "the postponement of elections does not mean that electoral campaigning is suspended. The constitutional date of 7 February 1991 for the inauguration of the president elected will be adhered to", despite the considerable financial burden involved. He estimated the sum needed for electoral registration alone at $8 million.

87. It became clear by the end of September that Haiti's armed forces were ready to guarantee electoral security and that they would not let acts of violence or massacres occur as they had on 29 November 1987. One of the signs of their determination was the establishment by the President of a joint civil-military commission against insecurity. It had six members: Jean Thomas, Minister of Defence, Joseph Maxi, Minister of the Interior, Pierre C. Labissière, Minister of Justice, Hérald Abraham, Commander-in-Chief of the Armed Forces, Acedius Saint-Louis, brigadier, and Fritz Romulus, brigadier. Its tasks were:

"1. To determine the causes of the insecurity undermining public peace and to propose the strategy to be adopted in order to create the favourable climate necessary for the forthcoming elections;

2. To collect and compile all data on security so that the electoral process can follow its normal course until it is completed;

3. To intervene promptly, either directly or through the special security bodies, in the event of disturbances and conflicts likely to affect the political atmosphere and interfere with the electoral process under way."

88. On 25 September 1990, the Provisional Electoral Council published the time-table that was to be finally adopted for the elections:

Start of registration: 5 October 1990;

End of registration: 25 October 1990;

Deadline for decisions by the Electoral Council on contested registrations: 5 November 1990;

End of period for renewal of spoilt, lost or stolen cards: 30 November 1990;

End of period for challenging candidacies: 19 October 1990;

Deadline for delivery of receipt for deposit: 24 October 1990;

Date for issue of certificates of submission of candidacy in the absence of any challenge: 26 October 1990;

Deadline for CEP decisions on challenges to candidacies: 29 October 1990;

Deadline for validation of candidacies by the CEP: 6 November 1990;

Electoral campaign: 7 November-14 December 1990;

First round of voting: 16 December 1990.

89. According to the information we have, it was possible to stick to this very tight time-table.

90. Over the weeks, the CEP had meetings with the military authorities and departmental and communal electoral offices to discuss a plan for electoral security. The military authorities constantly repeat that they are ready to guarantee security at election time.

91. The appeals made to all sections of the population, particularly by the Catholic Church/Episcopal Conference, for citizens to register for the elections in large numbers gradually bore fruit, and by the time the lists were closed there were a very high number of registrations.

92. The Episcopal Commission Justice and Peace expressed the view, on 19 September 1990, that "the arrest of William Régala and Roger Lafontant, the recall of certain criminal officers in the rural police, and the transfer of some members of the military involved in massacres, including those of 29 November 1987, are the minimum conditions that must be met before registration begins". These arrests, however, despite many appeals from different social, political and human rights circles, were not to take place.

93. From the beginning of October 1990, United Nations and OAS observers were present in Haiti to observe and facilitate the electoral process. An agreement was reached on 4 October between the CEP and the OAS secretariat under which the CEP guaranteed the observers "the right to communicate freely with all parties, political groups and social organizations", ensuring them "free access to registration and polling stations on registration, election and vote-counting days, and to the CEP's computerized monitoring centre ... to voter registration lists, voting and vote-counting records, and to any other document relating to the conduct of the electoral process".

94. Nevertheless, there were a few incidents similar to those that occurred in 1987: on 7 October, in Gonaïves, two registration and polling stations were smeared with excrement, and graffiti denouncing article 291 of the Constitution appeared on the walls. The head of the BED (Departmental Electoral Bureau) of Gonaïves described this as an intimidation campaign.

95. At the close of registration, there were 26 candidates for the presidency and, as at 23 October 1990, approximately 2 million citizens had registered out of a potential electorate estimated at approximately 3.5 million citizens.

96. After numerous legal manoeuvres by the Provisional Government to bypass the opposition, former President Leslie Manigat was authorized to return to Haiti and did so on 20 October.

97. On 12 and 13 October, Roger Lafontant founded a political party of Duvalier supporters at a convention which condemned interference by the United Nations and the Organization of American States in Haiti's internal affairs. He officially announced his candidacy for the office of President of the Republic.

98. The representatives of the OAS, led by the Secretary-General of the Organization, Mr. João Baena Soares, and of the United Nations, led by the Personal Representative of the Secretary-General, João Augusto de Medicis, both present in Haiti, travelled all over the country to follow the conduct of the electoral process.

99. On 5 and 6 November 1990, the CEP ruled out 12 of the 26 candidates for the office of President of the Republic, although without referring to article 291 of the Constitution, which excludes the "zealous artisans" of the Duvalier dictatorship for 10 years. Among them were the two leaders with arrest warrants outstanding against them or liable to be prosecuted: Roger Lafontant and Claude Raymond. The first was excluded for not having a birth certificate and an administrative release, and the second because his party had been recognized after the date for filing candidacies had expired. Leslie Manigat was also eliminated for violation of article 134-3 of the Constitution, which provides that "the President of the Republic ... cannot

take on a new mandate until five years have elapsed". The CEP eliminated 29 candidates for the Senate and 114 for the Chamber of Deputies; there remained 338 candidates for the 83 posts of deputy and 125 for the 27 seats in the Senate.

100. The army was reinforced to ensure security during the elections, and the armed forces high command declared on 29 October that civilians, including ex-military personnel, would be prohibited from, and could be arrested for, possessing firearms.

101. On 6 November 1990, Roger Lafontant, after being eliminated by the CEP, declared that he would maintain his candidacy for the Presidency. He filed his birth certificate and a release from the Higher Accounts Court with the CEP and stated his intention to sue the CEP.

102. On 29 October, 30 new United Nations observers, security experts and telecommunications specialists arrived in Haiti to "work in close co-operation with the Military Committee for the Security of the Elections".

103. On 21 November, Wilner-Gérard Vital-Herne was appointed mayor of Port-au-Prince, replacing Irène Ridore, the wife of Evans Paul, one of the leaders of the National Front for Change and Democracy (FNDC, Father Jean-Bertrand Aristide's main support) and himself candidate for mayor. This dismissal by Mrs. Trouillot was rather puzzling, since Mrs. Ridore had begun a restructuring of the mayor's office in order to eliminate corruption. Occurring as it did a few days before the elections, it gave rise to much speculation.

104. On 19 November 1990, statistics published by the CEP indicated 3,271,155 registered voters, 11 candidates for the Presidency, 119 for the Senate and 338 for the Chamber of Deputies.

105. Following disturbances during the campaign, the CEP made a declaration on 16 November calling upon the candidates and political parties:

> "to refrain from any linguistic excesses or verbal or physical violence against their opponents;
>
> "to avoid making gratuitous, unjustified or insulting accusations against their opponents or competitors;
>
> "to help the Electoral Council to detect and thwart any fraud or attempts at fraud that might be perpetrated by certain citizens, unworthy of participating in an honest and peaceful competition."

106. On 17 November 1990, the CEP warned the excluded candidates against "any attempt to disrupt the electoral campaign," and reserved the right to:

> "call to order any candidate, coalition, party or political group whose supporters or members jeopardize the lives or property of the people;
>
> "summon any candidate, coalition, party or political group whose supporters have prevented another candidate, coalition, party or political group from campaigning;

"cancel the declaration of candidacy of any candidate or coalition whose supporters, party or political group refuse to comply with the CEP's orders;

"hand over to the law any individual or group of individuals caught in flagrante delicto attacking the lives or property of the people".

107. On 19 November, the Secretary-General of the CEP, Mr. Jean Casimir, said that "excluded candidates are not allowed to campaign, unless they are heads of parties supporting the candidacies of members of their own political organization".

108. On 18 November 1990, Army Day, Commander-in-Chief Hérald Abraham exhorted officers, non-commissioned officers and rank and file to "behave with professionalism" and added that "the army intends to remain the vigilant guardian of the institutions that have been in existence for nearly two centuries of independent life".

109. On 22 November 1990, the CEP issued credentials to 344 observers and journalists. It indicated that the OAS and United Nations observation missions reflected "its desire to organize honest, credible, sincere and democratic elections".

110. Generally speaking, with the exception of a few regrettable incidents, the electoral campaign had been fairly correct until the news arrived, as this report was being completed, that there had been an attack against the supporters of Father Jean-Bertrand Aristide, who was favoured to win the presidential election. The grenade attack occurred on 5 December after an electoral meeting at Petionville, a residential suburb of Port-au-Prince, when several hundred people were leaving the meeting; 7 were killed and 46 were reported wounded. Father Aristide had already departed when the explosion occurred.

II. PRESENT LEGAL FRAMEWORK OF THE HUMAN RIGHTS SITUATION IN HAITI

A. State institutions

111. Mrs. Ertha Pascal Trouillot's accession to the presidency created a new de facto situation, which should be analysed.

112. Mrs. Trouillot was not elected to the post of President of the Republic, any more than her predecessors, General Avril and General Namphy, had been. The new Provisional Government was not an essentially constitutional Government. At least the Consultative Assembly (called the "Group of 12") attempted to base itself directly on the 1987 Constitution, article 149 of which stipulated that "Should the office of President of the Republic become vacant for any reason, the President of the Court of Cassation of the Republic, or in his absence, the Vice-President of that Court, or in his absence, the judge with the most seniority and so on by order of seniority, shall be invested temporarily with the duties of President of the Republic ...".

113. However, it was neither the President, nor the Vice-President, nor the most senior judge who was chosen, whether because there was strong objection to them by the Consultative Assembly and public opinion, or because they refused. In the end, it was the youngest judge who accepted the office - an act of undoubted courage, for it was a difficult post to take up during such a troubled period.

114. In addition to its expressed determination to base itself on the spirit of the 1987 Constitution, the Consultative Assembly wanted to set up a permanent mechanism for overseeing the executive: that was the idea behind establishing a Council of State. The existence of such a Council was not provided for anywhere in the Constitution; this was an original body, although it had existed before, in other forms, in the course of Haiti's history.

115. After the many coups d'état which occurred from February 1986 to 1989, there was a need to emphasize, first of all, that the Government was in fact only provisional in nature, next, that it would only manage current business, that elections would be organized as rapidly as possible, and, finally, that there must be a permanent balance between the executive and the Council of State, the latter acting as a sort of parliament, basically in a supervisory role.

116. The appointment of several democratic ministers concerned with human rights, as mentioned earlier, also reflected a determination to liberalize the régime. Similarly, the designation of a Provisional Electoral Council according to constitutional procedures and the appointment of the Chairman of the 1987 CEP to head it were very encouraging signs.

117. The establishment, thanks to the shared political will of the executive, the Council of State, the CEP and the army, of mechanisms for ensuring the security of the electoral process led to large-scale registration by citizens and the gradual acceptance, by the vast majority of the country, of United Nations and OAS assistance and observers.

118. The judicial system, however, remained the weak point. The problem of the independence of the judicial system in relation to the former Duvalier régime remained a serious difficulty, and its investigative capacity remained very limited; the main crimes committed in recent years, and in particular the November 1987 and September 1988 massacres, have gone unpunished.

B. International commitments

119. In December 1990, Haiti was a party to the following human rights conventions adopted by the United Nations: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Prevention and Punishment of the Crime of Genocide; the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Convention relating to the Status of Refugees; the Protocol relating to the Status of Refugees; and the Convention on the Political Rights of Women.

120. On the occasion of the fortieth anniversary of the Universal Declaration of Human Rights in December 1988, General Avril had pledged to accede to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the OAS Inter-American Convention to Prevent and Punish Torture, and to sign the Additional Protocol to the American Convention on Human Rights.

121. He did not do so either in 1988, 1989 or 1990. During the Expert's visit to Haiti in June-July 1990, he reminded the President of the Provisional Government and the Minister for Foreign Affairs of those commitments, repeated several times during his interviews with General Avril. Mrs. Trouillot said that she was prepared to deposit the instruments of ratification, but by early December 1990, no concrete moves had been made to that effect. Thus we will have to wait until the new President of the Republic is installed in office, following the 16 December election, in order to consider human rights issues on new bases.

III. PRESENT HUMAN RIGHTS SITUATION IN HAITI

122. We will begin our consideration in January 1990, which was the point at which the report submitted to the Commission on Human Rights at its forty-sixth session ended. The period 1986-1989 was examined in detail in that report and also in the report to the Commission at its forty-fifth session.

A. Principal violations of human rights

123. This study should be divided into two periods: the first two months of the year, which corresponded to the end of the Government of General Avril, and, from 10 March 1990 onwards, Mrs. Trouillot's Provisional Government.

124. Regarding the month of January 1990, it suffices to refer to the addendum submitted to the Commission at its forty-sixth session (E/CN.4/1990/44/Add.1) for a detailed description of events, which were a sort of paroxysm preceding the inevitable fall of the Avril Government, the suspension of numerous articles of the 1987 Constitution and the introduction of a 30-day state of siege and of visas for Haitians wishing to travel. Numerous extremely brutal arrests took place and censorship was brought in. For the precise circumstances of this period, the reader is referred to paragraphs 4-24 of document E/CN.4/1990/44/Add.1.

125. The state of siege was lifted on 29 January 1990, as announced, and, on 7 February, the Minister of Information proclaimed an amnesty for 19 political prisoners, including Jean Auguste Mesyeux, Evans Paul and Etienne Marineau, who had been arrested in November 1989, and Frantz Patrick Beauchard, one of the sergeants who had put General Avril in power.

126. But the period in general, like the preceding periods, was characterized by violence in rural areas and peasant massacres, particularly in the region of Artibonite; later, as the elections approached and looked more and more likely to be held, there was violence of a political nature; finally, there were a number of provocative incidents from July 1990 on, with the return of William Régala, Claude Raymond and Roger Lafontant.

127. The negative role played by certain section heads, described in previous reports submitted to the Commission on Human Rights, unfortunately did not change, and was calculated to discourage voters in rural zones from going to the polls, although ultimately this did not occur. Rather than provide a tedious list of individual human rights violations, it seems preferable to limit ourselves to a few particularly significant general trends.

1. The role of the section heads and the peasant massacres

128. It has already been indicated that 75 per cent of the Haitian population lives in rural areas. The rural sections come under section heads, who are often the sole representatives of the State in the countryside; they deal with maintaining order, markets, tax collection and land problems. Many of them have regularly misused their power and engaged in various kinds of extortion against the population they are supposed to protect. They have one or more assistants and report directly to the commander of the military district.

129. They often buy their office, at prices that may range from $2,000 to $10,000, and usually earn $120 per month. Their assistants are not supposed to earn a salary and thus obtain their money from the population. They pay the section heads a portion of what they receive, and in this way the system of corruption is maintained.

130. The principal massacres in 1990 occurred in Artibonite, a region with a tradition of intense conflict. When they were not directly responsible for them, the section heads allowed them to take place.

2. Massacre at Piate (12 March 1990)

131. Piate is situated in a poor mountainous area in the first communal section of Montrouis (Artibonite). Peasants in the area have long been opposing a non-resident landowner, Olivier Nadal, who they say robbed them of 100 hectares of fertile land. They therefore attempted to occupy the land. On 13 March, the section head and his assistant killed a resident. The two assassins were killed in retaliation and their bodies were burned. Immediately thereafter, a group of residents from Deluge, armed with machetes, rushed off to Piate and clashed with 30 soldiers from the Saint-Marc garrison under the command of Lieutenant Bazil. With the help of the group from Deluge, the soldiers burned and sacked the village of Piate: 8 peasants were killed, 335 houses burned, fields destroyed and cattle killed; 2,000 peasants were left homeless.

132. Shortly after the massacre, Commander-in-Chief Abraham gave instructions to restore order. The Minister of Justice announced that an effort would be made to find solutions to the land disputes in Artibonite, and that legal proceedings would be instituted against the perpetrators or instigators of the crimes, but nothing of note has been done.

3. Massacre at Délatre (16 March 1990)

133. On 16 March 1990, a group of people from Délatre decided to "eradicate" ("déchonquer") Marène Lambert, a section head, and, not finding him at home, burnt his house. Two elderly neighbours were killed between 16 and 20 March by the section head's assistants, to whom they had complained about the fire. On 21 March, section head Lambert recruited approximately 200 persons armed

with pistols, picks and machetes, while another group from Délatre had come out unarmed to attempt once more to "eradicate" Lambert. The two groups clashed, and 11 to 13 persons from Délatre were killed.

134. The Petit Goâve military authorities took away the bodies and attempted to arrest a few members of the defence committee. On 7 April, they arrested a local Catholic Church leader, Raphael Germain, which led to a march by several dozen persons in Petit Goâve, demanding his release and the arrest of Marène Lambert and other persons responsible for assassinations. No disciplinary action or legal proceedings have been taken against Lambert.

4. Massacre at Pérodin (31 May 1990)

135. At least seven persons were killed at Pérodin, fifth communal section of Petite Rivière in Artibonite, by Sillien Thélot, former section head ousted by the population, who came back to take revenge accompanied by over 25 assistants. He fired shots in all directions, killing several people, and was then captured by the villagers and killed with machetes. Many persons were also wounded.

136. About 15 persons were then arrested by soldiers, under the command of Major Maxi Maxime, for the death of Sillien Thélot, but only one person was arrested for the deaths of the civilians. Among those arrested were the representative of the Justice and Peace Commission and a member of the peasant organization Tet Kole (heads together).

137. The destructive role played by Sillien Thélot had been repeatedly pointed out in the past, especially by the Catholic Church, and the Justice and Peace Commission had submitted a detailed file to the area's military commander describing Sillien Thélot's abuses since 1989. (He had been appointed section head in April 1989 and since then had been the subject of large numbers of complaints for extortion, ill-treatment, beatings, etc.).

5. Assassinations of 21 June 1990

138. On 21 June 1990, Serge Villard, a respected member of the Council of State where he represented the private enterprise sector, and Jean-Marie Montes, a trade unionist, were assassinated while participating in a meeting between the Council of State and grass-roots organizations.

139. Whoever the culprits were, this was a political crime, the basic goal of which was to intimidate the Council of State and the grass-roots forces. Three gunmen, two in military uniform, participated in the operation. Serge Villard died three days later, and Jean-Marie Montes was killed outright. According to several accounts, the attack had been aimed against the President of the Council of State, Dr. Louis Roy.

140. The police did not arrive until half an hour after the events. The Government declared two days of national mourning, but the investigations were not pursued very actively, and, according to a press release by the Ministers of the Interior and Justice dated August 1990, the judicial and police inquiries were stagnating and still in a preliminary phase seven weeks after the events. The assassination came to the fore again in October, when a group of United States experts went to Port-au-Prince to assist the police and judicial authorities in their investigations.

141. The attack on 5 December 1990, at the close of an election rally for Father Aristide in Petionville, was also political in nature. At the time this report was prepared, the Expert did not have details on the circumstances of these assassinations, but there is no doubt that there were attempts at intimidation.

142. There were other acts of violence during the year, against vigilance brigades in Port-au-Prince (for example, 15 persons killed during the night of 22/23 March 1990), against the press, against political personalities: Maris Michèle Gaillard de Ronceray (wife of Hubert de Ronceray) on 22 March 1990; Sylvio Claude (candidate of the Christian Democratic Party in the presidential election) during the night of 4/5 April 1990; Irène Ridore, Mayor of Port-au-Prince, repeatedly threatened or attacked; the most typical example having occurred on 30 April 1990, when a man named Kesner Sylvestre fired a shot at her: although immediately arrested, he was released the same day.

B. Responsibility for violations, and government investigations, during 1990

143. First, it can be said that, since the assumption of power by Mrs. Trouillot's Provisional Government, the army - despite some difficulties and a number of individual acts of extortion - has respected its undertakings not to interfere with the normal functioning of institutions. General Abraham, Commander-in-Chief of the armed forces, used what means he had to ensure the security of the election preparations, the installation of the CEP, the election campaign and, lastly, the elections themselves.

144. Also, in some recent cases of human rights violations, there was somewhat greater determination to stop them. For example, a commission of inquiry, consisting of the Minister of Justice, four Councillors of State and the Government Commissioner, went to Cabaret on 23 April 1990 to investigate incidents that had occurred the week before. Twenty detainees were freed following that visit.

145. Similarly, the Government Commissioner, Mr. Bayard Vincent, asked the armed forces to help him find the legal documents needed to bring to justice the suspected perpetrators of the massacre of 29 November 1987. So far, however, no file has reached the prosecution to enable it to start judicial proceedings.

146. One of the suspected assassins of Joseph Lafontant appeared in court at Port-au-Prince and four witnesses to the massacre in the church of Saint-Jean-Bosco on 11 September 1988 brought charges against him. But, because of the ineffectiveness of the justice authorities and of summary executions, "eradications" have continued to be committed by the Haitian people.

147. The Government Commissioner has repeatedly complained about the lack of co-operation on the part of the army and the inefficiency of the justice authorities, in particular as regards the massacre of Saint-Jean-Bosco, in which persons who have been implicated and arrested (Paul Joseph, Kesner Pongnon) are not brought before the courts, while others remain free despite the warrants of arrest issued against them (Rodrigue Monestine, Willy Jean).

148. Insecurity remained high throughout the year and the protection of institutions did not seem effective.

149. Certainly, the most flagrant case of impotence is that of Roger Lafontant, who returned to Haiti on 7 July 1990 accompanied by William Régala, although a warrant of arrest had been issued against him. As Minister of the Interior and of Defence under Jean-Claude Duvalier between 1982 and 1985, he had headed the VSN (National Security Volunteers), more generally known as the "Tontons Macoutes", in the late 1970s. Among other serious abuses, he is suspected of having personally tortured a number of persons, including the journalist Pierre Robert Auguste and Pastor Antoine Leroy.

150. Despite the order of Minister of the Interior Joseph Maxi to arrest him, the head of security at the airport, Captain Patrick Bastien, had Lafontant taken into the VIP lounge, claiming that he "never received any instruction from his superiors to arrest Roger Lafontant".

151. On 8 July, Bayard Vincent, the Government Commissioner, issued an arrest warrant against Lafontant, which was annulled by Judge Justin Fougère on 9 July and again by the Senior Judge of the Civil Tribunal, Arnold Charles.

152. Another arrest warrant was issued on 10 July but not executed. A third, dated 16 July, was, like the others, not executed either. Meanwhile, the Government Commissioner began to receive death threats, in particular, at hearings on 18 and 20 July before Judge Charles. The army claimed that it had not been able to find Roger Lafontant, although he had announced his candidacy for the office of President of the Republic and was making numerous public appearances, holding a rally on 8 September and going to various provinces to organize gatherings. For example, on 13 and 14 October, at Port-au-Prince, hundreds of Duvalier followers held a political convention, at which Lafontant appeared armed and in uniform and was proclaimed head of a new party, the Union for National Reconciliation.

153. What is more, on 5 October 1990, a decree of the Provisional Government established a commission of inquiry to clarify "... the causes and circumstances of the tragic events that took place at Port-au-Prince on 26 April 1986, 29 November 1987 and 11 September 1988, at Santos on 21 June 1990, and at Petionville on 29 June 1990, as well as those at Jean Rabel, Labadie, Piate, Cabaret and Pérodin". The commission is to "gather the complaints and grievances of victims of the crimes and offences committed during the above-mentioned events; collect all information from any witnesses to those events [and] convoke, for investigation, all persons reported to it by witnesses or by the victims themselves". These good intentions are laudable, even though they have produced no concrete results to date.

154. It can therefore be said that the installation of the Provisional Government of Mrs. Ertha Pascal Trouillot was marked by a noteworthy statement of intentions, that the armed forces have gradually begun to change their attitude especially with regard to the electoral process, but that there are still numerous violations, that justice is still as non-existent as ever and that the pressure of the Duvalier forces is still sufficiently strong to prevent the authorities from putting an end to their pernicious activities.

IV. MISSION TO HAITI AND SUBSEQUENT ACTIVITIES

155. The Expert visited Haiti, accompanied by an official of the Centre for Human Rights at Geneva, from 26 June to 5 July 1990, with a view to having contacts with the country's new authorities, democratic elements and non-governmental organizations; to observing developments and the evolution of institutions; and to evaluating the human rights situation since the beginning of the year. It was also necessary to consider, with the Provisional Government, the measures taken to complete the electoral process.

156. Before arriving in Haiti, the Expert made a brief stop in New York, to go to United Nations Headquarters and see the Personal Representative of the Secretary-General, Ambassador João Augusto de Medicis, and his team, and to discuss with him the development of the electoral process and of the situation in general. During the stop in New York, there was also a discussion with representatives of the Americas Watch Association and especially with Kenneth Roth, Mary Jane Camejo, Ann Fuller and Jocelyn Maccalla of the National Coalition for Haitian Refugees (NCHR).

157. At the government level, the Expert had conversations with the Head of State, Mrs. Ertha Pascal Trouillot, accompanied by her Minister for Foreign Affairs, Mr. Kesler Clermont, who also received him for a separate talk; with Mr. Joseph Maxi, Minister of the Interior; Mr. Pierre C. Labissière, Minister of Justice, and Mr. Jean Thomas, Minister of Defence. He also met the Mayor of Port-au-Prince, Mrs. Irène Ridore (later dismissed), accompanied by her husband Mr. Evans Paul; all the members of the Provisional Electoral Council and in particular its Chairman, Mr. Sabalat, and Secretary-General, Mr. Casimir; the Commander-in-Chief of the armed forces, Lieutenant General Hérald Abraham; all the members of the Council of State, including its Chairman, Dr. Louis Roy; and the officers of the Co-ordinating Committee for the Security of the Elections, Colonels Cedras, Silva and Duperval.

158. It is worth noting that the welcome received from government authorities was much warmer than in previous visits. The Minister of the Interior, for example, accompanied by the Director of Civil Aviation, Mr. Jeune, came to meet us at the airport and immediately granted us a first interview.

159. The Expert also met representatives of the Church at various levels: members of the Justice and Peace Commission, members of the Episcopal Conference, and Father Antoine Adrien (of the Honour-Respect for the Constitution group). Father Aristide, who had been met during earlier visits, was away, travelling in Europe.

160. Several meetings were held with members of the diplomatic corps, including Mr. Pierre Guigere, Ambassador of Canada; Mr. Hugo Alvarez Pifano, Ambassador of Venezuela; Mr. Karl-Otto Koenig, Chargé d'affaires of Germany; Mr. Raphael Dufour, Ambassador of France; Mr. Sergio Romero Cuevas, Ambassador of Mexico; Mr. Alvin Adams, Ambassador of the United States; Mr. José del Carmen Acosta y Carrasco, Ambassador of the Dominican Republic; and the Apostolic Nuncio.

161. Meetings and talks were also held with leaders of the democratic sector and with politicians: Mr. Serge Gilles (seen in France a few days before the departure of the mission); Dully Brutus and Arnold Antonin, Haitian Progressive Revolutionary Nationalist Party (PANPRA); Mr. Victor Benoit,

National Committee of the Congress of Democratic Movements (KONAKOM); Mr. Magloire, MNP28; various members of the Honour-Respect for the Constitution group, (Father Antoine Adrien, Misha Gaillard etc.); and Mr. René Théodore, Unified Haitian Communist Party (PUCH). Mr. Marc Bazin (of MIDH) was not contacted because he was travelling in the United States.

162. The Expert was also able to obtain information from most of the organizations defending and promoting human rights in Haiti: the Haitian League for Human Rights (Attorney Jean-Claude Nord), the Haitian Lawyers' Committee (Moyse Senatus), the Centre for Rights and Freedoms - CHADEL (Jean-Jacques Honorat), the League of Former Political Prisoners of Haiti (Mr. Robert Duval), and the Ecumenical Mutual Aid Service (Mr. Daniel Henrys). There were also talks with the press and television (Haiti Solidarité International, Radio Métropole).

163. On 30 June and 1 July 1990, the Expert travelled to Saint-Marc and several rural sections of the Artibonite region. He was accompanied by Father Gilles Danroc, member of the Justice and Peace Commission, and two United States jurists, Mr. William G. O'Neill and Mr. Elliot J. Schrage, members of the Lawyers' Committee for Human Rights. During the trip, he visited Saint-Marc prison, met the Commander of the Subdistrict, Captain Ira Irak, and had numerous conversations both with Saint-Marc prisoners and with peasants of a number of rural sections, and lastly with several priests working in the Artibonite region.

164. The visit to Saint-Marc prison enabled the Expert to see for himself the prisoners' very bad conditions of detention. Most of them are very thin and clearly undernourished. They must pay for their food and water. Hygienic conditions are deplorable: the prisoners sleep directly on the ground without a mattress, 30 to 40 per "dormitory" in a large room without light or windows. There is only one shower for all the prisoners, and it is not always in working order. The toilets are disgustingly filthy.

165. Most of the prisoners had not seen a judge (whereas the Constitution provides that detention may not exceed 48 hours without a hearing by a judge). According to the list posted at the entrance, of 63 prisoners (59 men and 4 women), on the day of our visit, 5 men had been sentenced and 54 were awaiting trial. According to the prisoners, these "provisional" detentions vary in length, from a few days to 16 or 18 months.

166. The roll of prisoners is rather well kept, containing for each prisoner: name, date and place of arrest, arresting authority, date of offence and, where appropriate, sentence and transfer. During the visit the Expert spoke to the former head of the Pérodin section and certain participants in the massacre of 31 May 1990.

167. At Verettes, the Expert, visited the dwellings of peasants of the fourth, fifth and sixth sections in the company of parish priests, and spoke to many of them. This offered an opportunity to gather direct evidence on the role played by the section heads of the area in their daily harassment of the peasants, and in the preparation of the climate of violence that had preceded the massacre of 29 November 1987 during elections. This applied to the case of Joseph Milo for the fourth section, and to that of Nelson Dorval (known as Nelon) for the fifth section, both of them appointed by General Namphy in reward for their activities in 1987 to prevent the elections.

168. We were able to gauge not only the anxiety of the peasants, none of whom has forgotten the events of November 1987 or those responsible for them, but also their great organizing ability. For example, they have created something like volunteer "justices of the peace" so as not to have to complain to Nelon (the section head) and to pay him for each visit. They have established economic interest groups, so as not to have to go to the State in case of disputes. Disputes are settled internally on a footing of equality.

169. Lastly, various informal meetings were held with Haitian personalities or foreigners living in Haiti, and the Expert had conversations in France with visiting Haitian personalities.

170. We wish to stress once again the valuable assistance received from the UNDP Resident Representative and the entire mission. They all greatly facilitated the many contacts we managed to have, and placed at our disposal the equipment of the Port-au-Prince mission. We thank them once again on this occasion. UNDP's activities in Haiti deserve special mention because they are much broader than those of the usual development aid mission and to a very large extent are concerned with the "human rights dimension". There are many examples of this but we shall cite only one: the translation into Creole of the Universal Declaration of Human Rights and its wide dissemination throughout the territory. On 5 July 1990, we attended a press conference at which relevant educational material was presented. The text itself, accompanied by numerous very instructive illustrations, constitutes an excellent pedagogical document for teachers and community leaders, who publicize it throughout the country. In addition, it is accompanied by an advertising campaign on radio and television, which helps to reach a vast public.

171. The Expert supplemented the work done during his mission by studying numerous governmental and non-governmental documents received during the year from Port-au-Prince, New York and Geneva. In view of the elections to be held on 16 December 1990 and 20 January 1991 and of the very important changes which are bound to ensue, it was decided, in agreement with the Centre for Human Rights and the United Nations Secretariat, to entrust the Expert with a new mission at the end of January 1991.

172. There has been no change for the better in the economic situation since the report submitted to the Commission in 1990 (E/CN.4/1990/44, paras. 97 and 98).

173. With a constantly expanding population which, according to IDB estimates, amounts to approximately 6.3 million, the population density is 220 inhabitants per square kilometre - which is considerable for a largely rural country. A very large proportion of the population still suffers from malnutrition; medical care is inadequate (1.8 doctors, 0.2 dentists, 1.9 nurses - most of whom are in urban areas - per 10,000 inhabitants).

174. More than 77 per cent of the population is illiterate (90 per cent in rural areas) and the literacy programme has been suspended. Only 45 per cent of school-age children regularly attend primary school and 10 per cent, secondary school. The public debt is growing, and the amount of external aid has fluctuated considerably depending on the political environment. Emigration and the "boat people" phenomenon have continued, although they appear to be declining somewhat as compared with previous years.

175. Only a lasting stabilization of political life following the elections of December 1990 and January 1991 could help impr e the economic situation, end corruption, promote the supervised utilization of greater international aid and halt attacks on human rights.

176. For the time being, the instability which has been an essential feature of the long period of transition towards democracy that began on 7 February 1986 does not seem to have ended. However, the determination of the provisional presidency, the Council of State, the CEP, the army and the great majority of political forces to see through to the end a democratic, fair and non-violent electoral process constitutes real evidence of a changed state of mind. The determination with which the United Nations, the OAS, and a large number of governmental and non-governmental organizations are aiding that process is increasing its chances of success. The massive registration of voters in late November and early December suggests that the results of the elections will be significant.

177. On the other hand, the findings in the 1989 and 1990 reports concerning the failure of the justice authorities to play their role unfortunately remain true: they are still characterized by incompetence, lack of will or independence, links to Duvalierism and even corruption. The Roger Lafontant episode is only one illustration of many other cases.

178. The attitude of Mrs. Trouillot towards the elections has been very different from that of General Avril, and the determination to hold them and to ensure their security by the army has not faltered.

V. PROVISIONAL CONCLUSIONS

179. In view of the mission planned at the end of January 1991 both to evaluate the results of the electoral process and to meet the newly elected President, these general conclusions will be only provisional. They may be summed up as follows:

(a) The installation of a Provisional Government in March 1990, backed up by a Council of State representative of the various sectors of civil society, marked progress over the preceding military Governments;

(b) The undertaking of December 1988 to ratify the international human rights conventions, has not yet been honoured;

(c) The Government and the judicial authorities have still not taken effective measures to investigate past and present violations of human rights and to bring the guilty to justice;

(d) They have not been able to put a stop to the abuses being committed with impunity by section heads in rural areas or to prevent the occurrence of serious violations of human rights: massacres of peasants, murders of political and trade-union leaders;

(e) The principal obstacles hindering the process of real improvement in the human rights situation in Haiti have not been removed:

(i) an ineffective judicial system;

(ii) highly militarized rural areas;

(iii) the failure to separate the army and the police forces;

(iv) the fact that the persons responsible for the principal massacres, in particular those of 29 November 1987 and 11 September 1988, have not been put on trial;

(f) The paramilitary forces have continued to lose some of their economic and financial power, but they still have enough to remain dangerous and to hinder the movement towards democracy;

(g) Many provisions of the 1987 Constitution have been restored but the Government, having no basis in law, remains very provisional and must hand over to an elected Government;

(h) It has accordingly organized the electoral process with the support of the CEP, the army and the Council of State; a continuation of this process without violence would mean a great step forward;

(i) The situation as regards respect for economic, social and cultural rights is still very disturbing; only the stability of a democratically elected president can open the way to correction of the situation.

VI. PROVISIONAL RECOMMENDATIONS

180. In conformity with his mandate under resolutions 1987/13, 1988/51, 1989/73 and 1990/56 of the Commission on Human Rights, the Expert submits the following recommendations:

(a) The Commission must continue to monitor the human rights situation in Haiti, with a view to fostering the incipient improvement observed;

(b) It should express its concern at the persistence of serious violations of human rights and fundamental freedoms, despite the prospect of real democratic change;

(c) The Commission should also express its great satisfaction at the smooth way in which the elections have proceeded, but it should maintain an independent expert and instruct him to continue studying the development of human rights in Haiti, in view of the fragility of the process and the instability observed in the last five years;

(d) If the elected President submits requests for technical assistance, they should relate to the administration of justice, aid to the poorest communities and the police, so as to foster the organization of civilian police services trained in human rights and in the minimum standards for maintaining order.

181. Those are the recommendations submitted by the Expert as a result of his third mission to Haiti. He considers it very important to pursue the dialogue with the new Government of Haiti which should take up office in February 1991 and to establish a fruitful exchange with it aimed at constantly improving the human rights situation.